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March 25, 2005

VIA E-MAIL *regs.comments@federalreserve.gov*

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1217; ANPR, Open-End Credit Rules of Regulation Z.

Dear Sir or Madam:

I am an attorney with the law firm of Butler, Snow, O'Mara, Stevens & Cannada, PLLC. I am writing on behalf of certain clients of the firm to submit comments specifically related to Q52 and Q55 of the above-referenced ANPR.

This firm and the clients we represent strongly urge either: (a) providing guidance not expressly addressed in existing rules (Q52) and/or (b) deleting obsolete rules or guidance (Q54) in connection with the application of 12 CFR 226.7(f) and (h) to home equity lines of credit with certain characteristics. The following discussion describes the issues of concern.

The general product in issue can be described as a first mortgage home equity line of credit. These credit extensions are typically originated as a refinancing of an earlier mortgage loan originated by some other lender, or as a purchase money mortgage, and are always structured as open-end credit. This loan product essentially combines into one loan the features of a traditional home mortgage and a home equity line of credit.

Applicants for the described product receive those disclosures required by 12 C.F.R. 226.5b(d) at the time of application for a home equity line of credit. Those disclosures, of course, include an itemization of all fees imposed by the lender to open, use or maintain the home equity account and an itemization of any fees that may be imposed by persons other than our client to open the account.

At the time of a loan closing, the borrower is furnished an initial disclosure combined with a home equity line of credit agreement. This initial disclosure complies with 12 C.F.R. 226.6 and again lists the prepaid finance charges and other charges that the borrower is about to

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incur. In addition, a HUD-1 form is prepared, according to RESPA requirements for purchase money loans or refinancings of purchase money loans, including the same fees and charges, and presented to the borrower in advance of closing.

As currently written, 12 CFR 226.7(f) and (h) essentially require a redisclosure of the information being provided in the 5b early disclosures, the initial disclosures, and the HUD-1 on the initial periodic billing statement sent to account holders. Based on contacts with mortgage lenders offering such products, we believe that the periodic statement disclosure requirements in 226.7(f) and (h) are unnecessary for the type of home equity line of credit product we have described.

The lenders we represent feel strongly that disclosing these prepaid finance charges and other fees and charges on the initial periodic billing statement, which the borrower may receive 15 to 30 days later, only serves to confuse the borrower or lead him/her to believe that these charges have been assessed twice. In fact, a client has reported that since providing the disclosure of prepaid finance charges and other charges on the initial periodic billing statement, there have been several inquiries from customers expressing confusion as to the fees shown and needing reassurance that the fees had not been charged against their account twice. Furthermore, our clients feel that giving these disclosures at an earlier point in time both satisfies the enhanced disclosure goals of the Home Equity Loan Consumer Protection Act, and also furnishes the borrower with all of the required disclosure information at a point in time that allows him/her to both shop and compare home equity plans and, perhaps, even choose not to open a home equity line of credit. Later disclosures through the medium of the initial periodic billing statement do not accomplish either of those goals.

The problem rests squarely with a specific provision of the Official Commentary to Regulation Z, Official Commentary 226.7(f)-8. That Comment states:

8. Start-up fees. Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement

This particular comment was added by the Federal Reserve Board in its regular 1986 revisions to the Regulation Z Official Commentary. That addition appears to have been made at a point in time when the Federal Reserve Board was becoming more and more concerned about the rising number of home equity lines of credit and the somewhat inadequate disclosures that were mandated by the Truth in Lending Act and Regulation Z with respect to home equity lines of credit at that point in time. At or about the same time, the Federal Reserve Board issued for comment proposed changes to Regulation Z in the area of home equity line of credit disclosures. That proposed rule was withdrawn in favor of legislation introduced into Congress and passed in

1988, the Home Equity Loan Consumer Protection Act. This Act incorporated many of the provisions contained in the Federal Reserve Board's proposed rule.

Shortly after the passage of that Act, the Federal Reserve Board amended Regulation Z to include a new Section 226.5b and other changes needed to implement that Act. Thus began a new process for disclosing home equity lines of credit, providing more information earlier in the loan origination process.

Our clients practice of providing the required disclosures both prior to and at the time of closing raises the following question: Does the Home Equity Loan Consumer Protection Act, with its emphasis on early disclosure and its frequent comparison to the closed-end credit disclosure format for variable rate mortgage products, occupy the field for home equity line of credit disclosure? If so, shouldn't the disclosure requirement previously espoused in Official Commentary 226.7(f)-8 be limited in its application to those open-end credit plans that would not be disclosed as home equity lines of credit? If Official Commentary 226.7(f)-8 were so limited, consumers would still receive the information required by Section 226.5b(d) and Section 226.6 at the time when it was most helpful, prior to becoming obligated for the home equity line of credit. Also, lenders could avoid a redundant and perhaps confusing disclosure of old information regarding prepaid finance charges and other fees and charges on the later periodic billing statement. Avoiding such confusion might also reduce the number of billing error notices that lenders receive.

In our research, we noted with interest the apparent deference that the Department of Housing and Urban Development (HUD) has given to the Truth in Lending Act and Regulation Z format for handling home equity line of credit disclosure issues that overlap between the Truth in Lending Act and the Real Estate Settlement Procedures Act.

In 1994, well after the passage of the Home Equity Consumer Protection Act, HUD adopted a Final Rule modifying its Regulation X which implements the Real Estate Settlement Procedures Act. In adopting its Final Rule, HUD observed that many comments regarding the proposed rule advocated adoption of the Regulation Z treatment for home equity lines of credit, citing extensive disclosure materials already mandated by the Home Equity Consumer Protection Act (See 59 FR 6506 at 6507.). In its Final Rule, HUD deferred to the Regulation Z requirement for home equity lines of credit for purposes of disclosure. As a result, 24 CFR 3500.7 of Regulation X, which requires a good faith estimate of fees and other charges, was amended to specifically provide that open-end home equity lines of credit that were properly disclosed under Section 226.5b of Regulation Z would be deemed to satisfy the requirements for a good faith estimate under the Real Estate Settlement Procedures Act.

Similarly, HUD modified the provisions of 12 CFR 3500.8, the provision requiring the delivery of a HUD-1 or HUD-1A form detailing closing costs, fees and other charges, to specifically exempt open-end home equity lines of credit that are properly disclosed under the Truth in Lending Act and Regulation Z.

Certain specific facts, applicable to the product we have described, raise an additional consideration related to the interrelation between RESPA, Regulation Z and the Truth In Lending Act. As mentioned initially in this letter, these home equity line of credit products are originated exclusively as first mortgage loans resulting from either refinancing or purchase money transactions. Because RESPA expressly applies to purchase money and refinancing transactions, our client provides the required RESPA disclosures in the form of a good faith estimate of closing costs and delivers a HUD-1 or HUD-1A form in connection with the closing. These RESPA disclosures are given in addition to the open-end home equity line of credit disclosures (just discussed) required by the Truth In Lending Act and Regulation Z. It appears to us that the requirement to provide disclosure of prepaid finance charges and other charges on the initial periodic statement is particularly superfluous in the context of the facts of this product or similar products. We would suggest that an exception analogous to that provided for closed-end credit in Section 226.18(c) of Regulation Z, in which compliance with RESPA is deemed to satisfy the disclosure requirements of Section 226.18(c), could be crafted to exempt lenders from providing the disclosure of prepaid finance charges and fees in the initial periodic statement if a lender has provided a good faith estimate and HUD-1 settlement statement in connection with making and closing the loan.

It is our contention that the Truth in Lending Act and Regulation Z should be interpreted by the Federal Reserve in such a way as to give paramount effect to the disclosure format established by the Home Equity Loan Consumer Protection Act. Earlier interpretative comments regarding the need for disclosure of prepaid finance charges and other fees or charges on the initial billing statement should be eliminated altogether with respect to home equity lines of credit. Additionally, and in the alternative, we believe that there is established precedent within 12 CFR 226.18(c) to exempt lenders from certain disclosure requirements for closed-end credit when a good faith estimate and HUD-1 statement are delivered to the borrower. At a minimum, a similar exemption from disclosure of prepaid finance charges and other fees and charges on the initial periodic statement should be afforded to home equity line of credit lenders that have delivered a good faith estimate and a HUD-1 statement to borrowers during the process of originating and closing the loan/line of credit.

A clarification of the entire initial billing statement disclosure requirement for prepaid finance charges and other fees and charges in connection with home equity lines of credit would greatly benefit many mortgage lenders affected by this disclosure requirement.

[Signature on Following Page]

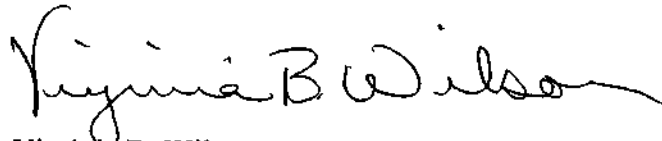
Jennifer J. Johnson

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Very truly yours,

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

A handwritten signature in black ink that reads "Virginia B. Wilson". The signature is written in a cursive style with a large, stylized "V" and "W".

Virginia B. Wilson